

## COMPLIANCE BOARD OPINION 93-9

August 17, 1993

*Mr. Conrad Potemra*

The Open Meetings Compliance Board has considered your complaint dated June 17, 1993, in which you allege that the Commissioners of Poolesville violated the Open Meetings Act in connection with a closed meeting on April 26, 1993.

Your complaint states that at their April 26, 1993, meeting, the Commissioners of Poolesville adjourned to a closed session to discuss acquisition of real property and contract negotiations. You complain that "the statement issued prior to the closed session contains no identification ... of the persons to be present to discuss either or both issues." Moreover, you state that the subsequently released summary about the closed session makes "no mention ... of any discussions concerning the acquisition of real property." You indicate your belief "that this action is a deliberate attempt to circumvent the 'Open Meetings' law."

In a timely response on behalf of the Commissioners of Poolesville, Town Manager James E. Alsobrook, Jr., asserts that the written statement issued prior to the meeting is not required by the Open Meetings Act to contain a list of those expected to be in attendance. With respect to the fact that two reasons were given for closing the meeting but only one subject was subsequently identified in the publicly available summary, Mr. Alsobrook states as follows: "It is true that only one subject was discussed because the information for the discussion on the acquisition of real property was incomplete and was deleted from the closed agenda. No mention of the acquisition of real property was made in the minutes because it was not discussed."

There appears to be no disagreement that the exceptions cited by the Commissioners, §10-508(a)(3) and (14), afford a proper basis for closing a session. A public body may close a meeting if it reasonably anticipates the need to "consider the acquisition of real property for a public purpose and matters directly related thereto" or "before a contract is awarded or bids are opened, discuss a matter directly related to a negotiating strategy or the contents of a bid or proposal, if public discussion or disclosure would adversely impact the ability of the public body to participate in the competitive bidding or proposal process."<sup>1</sup>

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<sup>1</sup> Under many circumstances, the matters that are encompassed by these two exceptions also constitute "executive functions"; if so, the Act would be inapplicable and the exceptions need not be invoked for a meeting permissibly to be closed. *See 78 Opinions of the Attorney General* \_\_\_\_ (1993) [Opinion No. 93-028 (July 28, 1993)]. However, the Commissioners of Poolesville did not assert that the discussion in question constituted an "executive function."

Before a public body may close a meeting for one of the fourteen reasons set forth in §10-508(a), it must follow certain procedures. One requirement is that the public body "make a written statement of the reason for closing the meeting, including a citation of the authority under this section, and a listing of the topics to be discussed." §10-508(d)(2)(ii). The Act does not require that the written statement contain a list of the individuals who are expected to be in attendance at the closed session.

Once a closed session occurs, a public body is required to include certain information in the minutes of its next open meeting:

- (i) a statement of the time, place, and purpose of the closed session;
- (ii) a record of the vote of each member as to closing the session;
- (iii) a citation of the authority under the subtitle for closing the session; and
- (iv) a listing of the topics of discussion, persons present, and each action taken during the session.

§10-509(c)(2).

While the "topics of discussion" disclosed in the subsequent minutes would ordinarily be the same as "the topics to be discussed" that were identified in the statement made prior to closing the session, nothing in the Act prevents a public body from discussing *less* than it originally anticipated.<sup>2</sup> A discussion on one topic, for example, might take much longer than anticipated, leaving no time to take up another topic that was on the agenda when the meeting was closed. Or, as in the situation discussed by Mr. Alsobrook, a topic turns out not to be ripe for discussion because necessary information is not available.

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<sup>2</sup> The converse is not true. That is, a public body may not discuss *more* than the topics within the scope of the exceptions that were invoked to justify closing the session. See Compliance Board Opinion 92-1, at 3 (October 15, 1992) ("A public body may not have a discussion in closed session beyond the limits of the applicable section.").

In summary, the Open Meetings Compliance Board finds no violation of the Open Meetings Act in connection with the meeting of the Commissioners of Poolesville on April 26, 1993.

OPEN MEETINGS COMPLIANCE BOARD

Walter Sondheim, Jr.  
Courtney McKeldin  
Tyler G. Webb